

(21,235.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 439.

ROBERT A. HOOE AND ARTHUR HERBERT,
APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse.....	7	4
Argument and submission.....	8	4
Findings of fact, &c., filed.....	8	4
Claimants' motion to amend findings.....	9	4
Defendant's motion to amend findings.....	11	5
Argument and submission on motions to amend.....	13	6
Order filing amended findings.....	13	6
Findings of fact	14	6
Conclusion of law.....	17	9
Opinion.....	17	9
Judgment.....	24	16
Claimants' application for appeal.....	25	16
Order allowing appeal.....	25	16
Clerk's certificate	26	16



1

I.—*Petition.*

In the Court of Claims.

No. 28238.

ROBERT A. HOOE and ARTHUR HERBERT
vs.

THE UNITED STATES.

Petition.

Filed August 1st, 1905.

To the Honorable the Chief Justice and the Judges of the Court of Claims:

Your petitioners, Robert A. Hooe and Arthur Herbert, respectfully show:

I.

That they are both residents and citizens of the United States.

II.

2 That they are owners of real estate in Square 406, in the City of Washington, District of Columbia, fronting 50 feet on E street, and 87½ feet on 8th street N. W., together with the building thereon, and that such building contains 20,173 5-12 square feet of floor space, which includes the floor space of the basement of the building, amounting to 2,039¾ square feet. The building was erected on the real estate aforesaid by the then owners thereof, under an agreement in writing, made and entered into March 16, 1882, by and between the then owners of the property and the United States represented by the Postmaster-General. From the time of the completion of the building, on or about October 1, 1882, the building, including the basement, was continuously occupied by the United States, for Post Office Department purposes, until November, 1899, the United States paying therefor as rental \$8,000 per annum, payable quarterly at the end of each quarter.

III.

On the 10th of July, 1900, the petitioners leased and rented to the United States, for the use of the Civil Service Commission, all of the building and premises above described, excepting the basement thereof, together with all and singular the appurtenances whatsoever to the said building and premises belonging and in anywise appertaining, for the period commencing on the first day of August, 1900, and ending with the end of that fiscal year, June 30, 1901, at the rate of \$333.33½ per month, to be paid on the last day of each and

every month. That leasing was at the rate of \$4,000 per annum, which amount was accepted by the petitioners partially because it was the amount appropriated by Congress for the rent of offices for the Civil Service Commission for that fiscal year, 31 Stat., 125, but principally because it was at the time understood by and between the petitioners and the officers of the United States that the latter would recommend that the amount of the rental of the property should be increased to \$6,000 per year, that being the fair and just value of the use of the entire premises.

The Civil Service Commission took possession of the building, and also of the basement, August 1, 1900, and has continued in the entire and exclusive possession of the building and the basement until this time. The amount appropriated for the rent of the offices for the Civil Service Commission for the fiscal year ending June, 30, 1902, was \$4,000, 31 Stat., 1001, and for the following fiscal year it was the same amount, 32 Stat., 162.

IV.

The Civil Service Commission continued in the use and occupation of the building and basement hereinbefore described, and on the 18th day of August, 1903, the United States entered into an agreement or lease with the petitioners for the use of all of the building and premises, excepting the basement thereof, by the Civil Service Commission for one year, commencing on the first day of July, 1903, at the rate of \$4,500 per annum, payable monthly on the last day of each and every month. The petitioners accepted the lease for that amount, partially because Congress had only appropriated \$4,500 for the rent of offices for the Civil Service Commission in that fiscal year, 32 Stat., 897, and partially because it was understood and agreed with the petitioners by the officers representing the United States that they would recommend that the amount of such rental should be increased to \$6,000 per annum. At the second session of the 57th Congress, the Secretary of the Interior submitted an estimate for \$6,000 for the annual rent of the building aforesaid for use of the Civil Service Commission, Doc. No. 12, 2d Sess., 57th Cong., but Congress failed to appropriate more than \$4,500, for such purpose. See also 33 Stat., Part 1, 129, 674. The contracts heretofore named will be introduced in evidence and are made parts hereof by this reference thereto.

V.

Although the petitioners had not rented the basement in the premises aforesaid to the United States for the use of the Civil Service Commission, and although the Congress of the United States had failed to approve the recommendations made by its officers, pursuant to the agreement with the petitioners, that the amount of the rental to be paid them should be increased by law to \$6,000 per annum, yet the United States, through the Civil Service Commission, took possession of the basement in the premises aforesaid, and from the first day of August, 1900, until this time has continued to use and occupy the same as well as said building, to the great dam-

age of the petitioners, and to the great benefit of the United States, because such basement not only contains the available floor space herein named, but it also contains all the machinery for running the elevator in the building as well as for furnishing steam for the heating thereof and for supplying water to the building. Such use of the basement by the United States was in fact highly essential if not absolutely necessary to the perfect enjoyment of the rooms in the building lying above the basement. Such use and occupation of the basement was and is of the reasonable value of, to wit: \$1,500 per annum, when used in connection with the remainder of the building.

VI.

Petitioners have received under protest all payments made to them, and have repeatedly complained to the United States, through various officers of the Department of the Interior, because they were not receiving the amount of rental justly due them for the
 5 use of all the property aforesaid, and such officials have in no sense disagreed with the statements and complaints made by the petitioners, but, on the contrary, have said that the petitioners ought to have and receive a rental of \$6,000 per annum for the use of all the property, and they have repeatedly promised to do all in their power to prevail on Congress to make the necessary appropriation in that amount. Petitioners believe that the officers of the Department of the Interior have acted in entire good faith with them in this behalf, and have endeavored to secure such appropriations, but without success. Petitioners aver that, by reason of the premises, they have been damaged in the sum of \$9,000, to wit:

Rent of the premises occupied, from August 1, 1900,	
to August 1, 1905, at its fair and reasonable value,	
\$6,000 per annum,.....	\$30,000 00
Less amount actually received by them for that period,	21,000 00
Amount now due,.....	\$9,000 00

VII.

Your petitioners are the sole owners of the claim sued on, and no other person or corporation is interested therein; no assignment or transfer of the claim, or any part thereof, or interest therein, has been made.

VIII.

Your petitioners are justly entitled to the amount herein claimed from the United States, as they believe, after allowing all just credits and set-offs, and they believe that the facts are correctly stated in this petition.

Wherefore your petitioners pray judgment against the United States for \$9,000.

DUDLEY & MICHENER,
Attorneys of Record.

6 DISTRICT OF COLUMBIA, ss:

Personally appeared before me, a notary public in and for the District of Columbia, Robert A. Hooe and Arthur Herbert, who, being duly sworn according to law, depose and say that they are the petitioners herein; that they have read and understand the foregoing petition, and that the matters and facts therein stated are true as they are informed and believed.

R. A. HOOE.
ARTHUR HERBERT.

Subscribed and sworn to before me this first day of August, 1905.

L. P. SQUIER,
Notary Public.

7

II.—*Traverse.*

In the Court of Claims of the United States, December Term, A. D. 1907.

No. 28238.

HOOE & HERBERT
vs.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

8

III.—*Argument and Submission.*

On the 5th day of February, A. D., 1908, this case was argued by Mr. L. T. Michener, for the claimants, and by Mr. C. F. Kinche-
loe, for the defendants, and the case was thereupon submitted.

On the 9th day of March, 1908, the Court filed findings of fact, conclusion of law, and opinion, dismissing the petition.

Both the claimants and the defendants filed motions to amend these findings, of which the following are copies.

9

IV.—*Claimants' Motion to Amend Findings.*

Filed April 23, 1908.

Claimants move the court to make the following amendments of the findings of fact:

1. Amend Finding III by adding to the fourth sentence these words: "for the entire building, including the basement."

2. Also amend that finding by striking the word "informed" out of the seventh sentence, and inserting the word "wrote" in lieu thereof.

3. Amend Finding IV by inserting in the second sentence, after the word "into", the following words: "negotiations with claimants by correspondence for the rent of all the building and premises for the use of the Civil Service Commission, but claimant refused to rent all the building and premises for \$4,500 per annum, and he finally made".

4. Amend Finding V by inserting at the end of the first sentence the words: "all with the knowledge of the Secretary of the Interior."

10 5. Amend that finding by striking out of the last sentence the figures "500" and inserting the figures "1,000" in lieu thereof.

6. Amend Finding VI by adding this sentence at the end thereof: "The fair rental value of the whole property during its occupancy by the Civil Service Commission was \$8,000 per annum, but the claimants never demanded more than \$6,000 per annum during the occupancy aforesaid."

11 V.—Defendants' Motion to Amend Findings.

Filed May 18, 1908.

Come now the defendants, by their Attorney General, and alleging error of fact upon the part of the court in the findings of fact filed herein on March 9, 1908, move the court to amend said findings as follows:

1. In Finding III, amend the first sentence of the third paragraph of the finding to read as follows:

March 3, 1901, Congress appropriated \$4,000, for rent for quarters for the Civil Service Commission for the fiscal year ending June 30, 1902, and shortly after the beginning of that fiscal year the Secretary of the Interior wrote to the claimants proposing a renewal of said lease for that year, in response to which the claimants wrote the Secretary of the Interior, "we are unwilling to bind ourselves to rent the said building for another year at the rate of \$4,000 per annum", and further stated that they could not, with justice to themselves, rent the entire building, including the basement, then occupied by the commission, at a rental of less than \$6,000 per annum.

2. In Finding IV, amend the last sentence of the second paragraph of said finding to read as follows:

The claimants took no action in response to said proposal further than to write the Secretary of the Interior requesting that the basement of the building, which had not been included in either of the leases to the Government, be included in the lease at the rate of 30 cents per square foot for its floor space.

12 3. Amend the last sentence of Finding V to state that the fair rental value of that portion of the basement in question was \$300 per year.

C. F. K.

J. Q. THOMPSON,
Assistant Attorney General.

13 VI.—*Argument and Submission of Motions to Amend Findings.*

On the 20th day of May, 1908, the motions of the claimants and defendants to amend the findings of fact, filed March 9, 1908, were argued by Mr. L. T. Michener, for the claimants, and by Mr. C. F. Kincheloe, for the defendants, and the motions were thereupon submitted.

VII.—*Order of Court on Motions to Amend Findings.*

Filed May 25, 1908.

Order.

It is ordered that the defendants' motion filed herein May 18, 1908, to amend the findings of fact filed March 9, 1908, be allowed in part and overruled in part.

It is further ordered that the claimants' motion filed April 23, 1908, to amend the findings of fact filed March 9, 1908, be allowed in part and overruled in part.

The former findings are vacated and set aside and amended findings are this day filed in lieu thereof *nunc pro tunc* as of March 9, 1908. The judgment and opinion to stand.

BY THE COURT.

14 VIII.—*Findings of Fact (as Amended), Conclusion of Law, and Opinion of the Court.*

Court of Claims of the United States.

No. 28238.

(Decided March 9, 1908.)

ROBERT A. HOOE and ARTHUR HERBERT

v.

THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

The claimants are residents and citizens of the United States.

II.

The claimants now are and at all the times hereinafter mentioned were the owners of real estate in the city of Washington, D. C., situ-

ated on the northwest corner of Eighth and E streets NW., fronting 50 feet on E street and $87\frac{1}{2}$ feet on Eighth street, together with the building thereon; such building containing 20,173 $\frac{5}{12}$ square feet of floor spaces, which includes 2,039 $\frac{3}{4}$ square feet of floor space in the basement thereof, not occupied by heating and elevator plants and equipment for the building.

III.

July 10, 1900, the Secretary of the Interior, under authority of the act of Congress making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1901, entered into a written contract with the claimants, whereby the claimants leased and rented to the United States Government for the use of the Civil Service Commission the building and premises above described, except the basement thereof, together with all and singular the appurtenances whatsoever to the said building and premises belonging and in any wise appertaining, for the period commencing the 1st day of August, 1900, and ending June 30, 1901, at the rate of \$333.33 $\frac{1}{3}$ per month, the right being reserved to the Government to terminate the lease after thirty days' notice in writing at the end of each calendar month.

August 1, 1900, the Civil Service Commission took possession of the entire building, including the basement, and has continued in exclusive possession thereof until the bringing of this action.

15 August 1, 1905. The amount appropriated by Congress for the rent of offices for the Civil Service Commission for the fiscal year ending June 30, 1901, was \$4,000, one-twelfth of which was expended as rent for offices for said Commission for the month of July, 1900.

March 3, 1901, Congress appropriated \$4,000 for rent for quarters for the Civil Service Commission for the fiscal year ending June 30, 1902, and shortly after the beginning of that fiscal year the Secretary of the Interior wrote to the claimants proposing a renewal of said lease for that year, in response to which the claimants wrote the Secretary of the Interior, "We are unwilling to bind ourselves to rent the said building for another year at the rate of \$4,000 per annum," and further stated that they could not, with justice to themselves, rent the entire building, including the basement, then occupied by the Commission, at a rental of less than \$6,000 per annum. No further action was taken in the matter of the renewal of the lease by either party for the fiscal year ending June 30, 1902, and the defendants continued in possession of said building and basement during said year and paid to the claimants the rate specified in the lease for the first year, to wit, \$4,000. In his estimates for the appropriations for the fiscal year ending June 30, 1903, the Secretary of the Interior submitted to Congress an estimate for an increase to \$6,000 for rent of quarters for the Civil Service Commission. This sum, however, not being included in the legislative, executive, and judicial bill for that fiscal year as passed by the House, thereupon the agent of the claimants wrote the chief clerk of the Department of the Interior that unless this estimate of \$6,000 was restored

by the Senate he was instructed by the claimants to ask for possession of said property at the earliest convenient time. The Senate was also informed of this conclusion of the claimants. This agent also appeared before the Committee on Appropriations of the House of Representatives in behalf of the claimants, and stated that the claimants would demand possession of the building unless an appropriation of \$6,000 was made for rental of the entire building, and the Secretary of the Interior transmitted to the chairman of the Senate Committee on Appropriations the letter from the agent of the claimants containing the statement that the possession of said building would be demanded unless said increase was made.

Congress, however, refused to increase the appropriation and appropriated for the fiscal year ending June 30, 1903, the sum of \$4,000 for rent for quarters for the Civil Service Commission, the same as in preceding years. No further action was taken on the part of either party relative to the increase of rent or demanding possession, and the defendants continued in possession of said property, including the basement, for that fiscal year, paying rent therefor at the rate of \$4,000 per year.

IV.

In the estimates for appropriations for the fiscal year ending June 30, 1904, the Secretary of the Interior renewed his estimate for an increase of \$2,000 for rent of quarters for the Civil Service Commission, and which appropriation for that fiscal year was increased by Congress to \$4,500. In consequence of this increase in the appropriation the Secretary of the Interior entered into negotiations with claimants by correspondence for the rent of all the building and premises for the use of the Civil Service Commission for the \$4,500 appropriated, but claimants refused to rent all the building and premises for \$4,500 per annum, and he finally made a lease with the claimants August 18, 1903, for all of said building except the basement for the fiscal year ending June 30, 1904, at the rate of \$4,500 per year, the other provisions of the lease being the same as those of the lease hereinbefore referred to.

May 18, 1904, Congress appropriated the sum of \$4,500 for rent for quarters for the Civil Service Commission for the fiscal year ending June 30, 1905, and on November 15, 1904, the Secretary of the Interior made a proposal by letter to the claimants for a renewal of the lease of August 18, 1903, for the fiscal year ending June 30, 1905, at the rate of \$4,500 per annum, in accordance with said appropriation. The claimants took no action in response to said proposal further than to write the Secretary of the Interior requesting that the basement of the building, which had not been included in either of the leases to the Government, be included in the lease at the rate of 30 cents per square foot for its floor space.

No further action was taken by either party with reference to the renewal of the lease or increase of rental for the fiscal year ending June 30, 1905, and the claimants were paid rent for that year at the rate of \$4,500, as provided by the appropriation and specified in the lease for the preceding year.

The appropriation by Congress for rent of quarters for the Civil

Service Commission for the fiscal year ending June 30, 1906, was also the sum of \$4,500, and the Commission, without any express renewal of the lease for this fiscal year, continued in occupation of the entire building, including the basement, up to August 1, 1905, for which the claimants have been paid at the rate of \$4,500 per year.

V.

Although the claimants never rented to the Government for the use of the Civil Service Commission, or for any other purpose, that part of the basement of said building not occupied by heating and ventilating plants and equipment thereof, yet the Civil Service Commission took possession of this portion of said basement and continuously occupied and used the same from the 1st day of August, 1900, until the bringing of this action, August 1, 1905; and in a letter to the Acting Secretary of the Interior dated November 28, 1904, relative to the matter of a renewal of the Government's lease for the building for that fiscal year, the claimants, among other things, called attention to the fact that the basement of the building was then fully occupied by the Civil Service Commission. The fair rental value of that portion of the basement occupied and used as aforesaid was \$400 per year; and the rental value of the entire building, including the basement, was not less than \$6,000 per year.

VI.

During the time that the defendants have occupied and used said building and basement belonging to the claimants, the claimants have receipted for rent for the same in full, except for the basement, which has been especially excluded from each of
17 said receipts given by the claimants. With the exception of this exclusion of the basement from said receipts, it does not appear that any other protest was ever made by the claimants that said payments were not in full for the rent legally due to them for said building. The claimants, however, repeatedly insisted that the defendants were not paying enough rent for said building, and on one occasion asked for extra rent for said basement, as heretofore found.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the petition be dismissed and judgment entered for the defendants.

Opinion.

BARNEY, J., delivered the opinion of the court:

This is a suit to recover \$9,000 for additional compensation for the use and occupation by the United States Civil Service Commission of the claimants' office building, situated on the northwest corner of Eighth and E streets NW., in the city of Washington, during the five years beginning August 1, 1900, and ending August 1, 1905.

The facts in the case are as follows: July 10, 1900, the Secretary of the Interior entered into a written lease for said building, exclusive of the basement, for the use of the Civil Service Commission, for the term of eleven months beginning August 1, 1900, and ending June 30, 1901, for the agreed rental of \$333.33 $\frac{1}{3}$ per month. August 1, 1900, the Civil Service Commission took possession of the entire building, including the basement, and continued in exclusive possession thereof until the bringing of this suit, August 1, 1905. This lease was entered into pursuant to an appropriation by Congress of \$4,000 for rent for quarters for the Civil Service Commission for the fiscal year ending June 30, 1901. Congress afterwards appropriated the same sum for rent of quarters for the said Commission for the fiscal year ending June 30, 1902, but the claimants refused to renew the lease for that year, insisting that an increase of rental to \$6,000 should be allowed them. The Civil Service Commission, however, continued its occupation of the building, including the basement, the defendants for the latter fiscal year paying rent at the rate of \$4,000 per annum. Congress made the same appropriation for rent for the fiscal year ending June 30, 1903. The written lease was not renewed; the claimants again insisted that a rental of \$6,000 should be allowed them, and the Civil Service Commission continued to occupy the whole building for the fiscal year ending June 30, 1903, and the defendants continued to pay rent therefor at the rate of \$4,000 per annum. Congress appropriated \$4,500 for rent for quarters for the fiscal year ending June 30, 1904, whereupon the Secretary of the Interior entered into a lease with the claimants for that fiscal year for all of said building, except the basement, at the rate of \$4,500 per annum; and the Commission continued to occupy the basement as before. Congress again appro-

18 appropriated \$4,500 for rent for the Commission for the fiscal year ending June 30, 1905, and the Secretary of the Interior requested the claimants to renew the lease last mentioned for the latter year, but the claimant declined and asked an allowance of 30 cents per square foot for the use of said basement. No further action, however, was taken by either party with reference to the renewal of the lease or the increase of rental. The defendants continued in possession of the whole building for that fiscal year and paid rent therefor at the rate of \$4,500 per annum. The same appropriation for rent was made by Congress for the fiscal year ending June 30, 1906, and the Commission continued in possession of the whole building without any renewal of the written lease until August 1, 1905, and for which the claimants have been paid rent at the rate of \$4,500 per annum. During these years the claimants have received for the rent paid them in full except for the basement, which has always been excepted.

The claim of the plaintiffs is made up of two distinct parts, and which require separate consideration: (1) An increase of rent for the building, exclusive of the basement, during such part of the five years as it was used and occupied without any written lease, and (2) rent for the basement of the building (which was never included in any lease) during the whole term of five years.

I. The facts touching the first claim, briefly stated, are: The Commission occupied the building from August 1, 1900, to June 30, 1901, under a written lease, the defendants paying a rental therefor at the rate of \$4,000 per year, and held over without any renewal of the lease until June 30, 1903, in the meantime paying the same rental. The written lease for the following fiscal year, ending June 30, 1904, was renewed at the rate of \$4,500 per annum, and the Commission occupied the building under it for that fiscal year, and held over until August 1, 1905, without any renewal of the lease, but during the latter period paying rental at the rate of \$4,500 per annum, as specified in the latter written lease.

It is evident that during such part of the period of five years, extending from August 1, 1900, to August 1, 1905, as the Government occupied the building without any written lease it was as a tenant holding over after the expiration of the former written leases. The alleged demands for possession on the part of the claimants were nothing more than threats for the purpose of securing a higher rental, and never ripened into a denial of the relation of landlord and tenant. This conclusion is made positive by the fact that during the whole period the claimants receipted in full for the rent received, exclusive of the basement, without any protest, except continuous complaint that they were not getting enough rent for the building.

It hardly seems necessary to quote or even cite authorities to show that the complaints and threats of the claimants did not amount to a notice to quit. (*Taylor's Landlord and Tenant*, sec. 483, and cases cited.)

It is also elementary that where the landlord suffers the tenant to remain in possession after the expiration of his lease the law presumes the holding to be upon the same terms as the written lease under which the entry was made. (*Taylor's Landlord and Tenant*, sec. 525; *Lovett v. United States*, 12 C. Cls., 67, 84; *Salisbury v.*

19 *Hale*, 12 Pick., 332.) The receipts in full given by the claimants enlarge this presumption into a positive conclusion. (*United States v. Childs*, 12 Wall., 232; *Murphy v. United States*, 104 U. S., 464; *De Arnaud v. United States*, 151 U. S., 483.) It has been held that acceptance of rent at a reduced rate after the expiration of a lease is conclusive evidence of modification of the lease. (*United States v. Bostwick*, 94 U. S., 67.)

It follows, therefore, conclusively, that the claimants can not recover under the first division of their case. It should be added, however, that the reasons hereinafter given for denying recovery under the second division apply with equal force to the first.

II. It is contended by the claimants that as the basement of the building was never included in any of the leases they are entitled to recover reasonable rent for the same during the whole period of five years upon an implied contract to that effect; and it is undoubtedly true that if the Government were an ordinary tenant such contention would be correct.

The several appropriation acts of Congress making provisions for the rent for quarters for the Civil Service Commission for the several years while the building of the claimants was so occupied, leaving out everything except the specific appropriation, were as follows:

"That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, in full compensation for the service of the fiscal year * * * for the objects hereinafter expressly named: * * * For rent * * * Civil Service Commission, four thousand dollars."

The laws then in force relating to this subject were as follows:

"SEC. 3679. No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations."

"SEC. 3732. No contract or purchase on behalf of the United States shall be made unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year."

Act of June 22, 1874 (18 Stat. L., 144):

"And hereafter no contract shall be made for the rent of any building or part of any building in Washington, not now in use by the Government, to be used for the purposes of the Government until an appropriation therefor shall be made in terms by Congress."

Act of March 3, 1877 (19 Stat. L., 370):

"And hereafter no contract shall be made for the rent of any building, or part of any building, to be used for the purpose of the Government in the District of Columbia, until an appropriation therefor shall have been made in terms by Congress, and that this clause be regarded as notice to all contractors or lessors of any such building or part of building."

The counsel on both sides in this case have shown great industry and displayed much learning in the discussion of the question involved, as its importance has well justified.

20 The claimants rely much upon the law of Congress creating the Civil Service Commission (22 Stat. L., 403), which provides as follows:

"That it shall be the duty of the Secretary of the Interior to cause suitable and convenient rooms and accommodations to be assigned or provided, and to be furnished, heated, and lighted, at the city of Washington, for carrying on the work of said Commission and said examinations, and to cause the necessary stationery and other articles to be supplied, and the necessary printing to be done for said Commission."

In reference to this statute it might be sufficient to say that there is nothing in this case to show that the Secretary of the Interior ever had anything to do with directing the occupation of the basement in question, either in person or by implication. It does not appear in any way how or why this was done, the simple fact only appearing that when the Civil Service Commission moved into the building of the claimants it took possession of the whole of it.

If Congress had made no provision for such rent, doubtless the Secretary of the Interior could have secured quarters for the Civil Service Commission and involved the Government for payment of

rent for the same. But Congress did make a specific appropriation for that purpose, and said that was all it would give.

Under the Constitution Congress holds the purse strings of the Government, and we do not think that by evasion or indirection any officer of the Government can deprive that body of this important privilege. Mr. Justice Story, in his Commentaries on the Constitution, in discussing this privilege of Congress, said: "The power to control and direct the appropriations constitutes a most useful and salutary check upon profusion and extravagance, as well as upon corrupt influence and public speculation." (2 *Story Com.*, sec. 1348.)

It has frequently been decided that where an individual enters into a government contract with one of its officers, he must take notice of the extent of authority conferred by law upon such officer. This is but an enforcement of the well-established principle that *ignorantia legis non excusat* (*Hawkins v. United States*, 12 C. Cls. R., 181; 96 U. S., 689). The facts in the present case show that the claimants had actual as well as presumptive notice of the extent of the authority of the Secretary of the Interior to enter into a contract for rent for the Civil Service Commission; for during the whole period they were persistently complaining of the small amount which Congress was appropriating for that purpose.

In fact, the opening paragraph of each of the written leases in this case shows a recognition by all parties of the source of authority to contract for rent for the Civil Service Commission, and which is as follows:

"Witnesseth: That in pursuance of authority conferred by an act of Congress approved April 17, 1900, entitled 'An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes,' wherein appropriation is made 'For rent of buildings for the Department of the Interior, namely, * * * for the Civil Service Commission,' the
21 said parties have covenanted and agreed, and by these presents do covenant and agree, to and with each other as follows:"

In the case of *Scammee and Barbour v. United States* (26 C. Cls., 119) cited by claimants, it appeared that the Post-Office Department, after the expiration of a lease for its use, continued to occupy certain premises in the city of Washington under no express contract for rent; and it was held that thereby an implied contract arose to pay a reasonable amount of rent for the same. It does not appear, however, that there was ever any limited appropriation by Congress to pay any rent for the building occupied during such time, or any limited appropriation for rent generally for the post-office at Washington. It should further be observed that the decision in that case is based largely upon the proposition that this occupation was ordered by the Postmaster-General. In other words, in that case the Postmaster-General, without any limitation upon the subject of rent by any law of Congress, ordered the occupation of the claimants' building for the necessary purposes of his Department, and that was held to be no violation of the law.

In that case it was held that section 3679, Revised Statutes, only forbids the execution of an express contract in a sum in excess of appropriations, and that notwithstanding this statute implied contracts might arise from the acts of public officers in the performance of their duties carrying on the business of the Government entrusted to them by law in their respective spheres; and the same construction has been given to that statute in numerous other cases. But no case has been called to our attention where it has been decided that an implied contract might arise under the circumstances of the case at bar. In none of the numerous cases cited by the claimants construing the statutes above quoted, does it appear that a limited appropriation had been made by Congress for a particular purpose, and that an additional expense had been incurred by a subordinate official for which payment was demanded.

In this connection it may be well to quote the language of the Supreme Court (the italics being ours) in the case of *Chase v. United States* (155 U. S., 489, 502):

"While the Postmaster-General, under the power to establish post-offices, may designate the places—that is, the localities—at which the mails are to be received, he can not bind the United States by any lease or purchase of a building to be used for the purposes of a post-office unless the power to do so is derived from a statute which either expressly or by necessary implication authorizes him to make such lease or purchase. The general authority 'to establish post-offices' does not itself, or without more, necessarily imply authority to bind the United States by a contract to lease or purchase a post-office building, although an appropriation of money to pay for the rent of a post-office building at a named place might give authority to the Postmaster-General to lease such building in that locality as he deemed proper for the service, *always keeping within the amount so appropriated*. So, also, the power to lease a building to be used as a post-office may be implied from a general appropriation of money to pay for rent of post-offices in any particular fiscal year or years."

In the *Smoot* case (38 C. Cls., 418) there was no question of implied contract involved. On the contrary, in that case there was too much of an *express* contract, *i. e.*, a written lease for five
22 years, and occupancy for less than three. It was there held that this contract was only binding upon the Government to the end of the fiscal year in which it was made, with a future option from year to year to the end of the term; but that when the Government abandons leased premises under such circumstances in the midst of a fiscal year it is liable for rent for the whole of that year. In the same case it is held that "occupancy by an unauthorized officer of the United States will not have the effect of continuing a lease." (*Id.*, 427.)

During all of the time for which additional rent is sought to be recovered in this case, the law forbade any Department of the Government from involving the Government in any express contract for rent for quarters for the Civil Service Commission in any sum in excess of the amount specifically appropriated for that purpose. Congress, from year to year, specifically appropriated a sum for

each fiscal year *in full* for that purpose, and the Secretary of the Interior, pursuant to such appropriations, has rented quarters for that Commission.

To now hold that the Civil Service Commission can take possession of the whole of a building, a part of which has been rented for its use pursuant to an act of Congress, and make the Government liable for this additional expense, would be equivalent to saying that Congress is powerless in limiting the expenses of the Government. Under such a holding the Civil Service Commission might have "swarmed" into possession of the whole block in which they were located and involved the Government in payment for rent of the same. Such a ruling would place the Treasury of the Government at the mercy and convenience of every one of its officers. We have been cited to no authority sustaining such a conclusion, and do not believe it to be the law.

We might add that section 3679, Revised Statutes, *supra*, has recently been amended by Congress by providing:

"Nor shall any Department or any officer of the Government accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. All appropriations made for contingent expenses or other general purposes, except appropriations made in fulfillment of contract obligations expressly authorized by law, or for objects required or authorized by law without reference to the amounts annually appropriated therefor, shall, on or before the beginning of each fiscal year, be so apportioned by monthly or other allotments as to prevent expenditures in one portion of the year which may necessitate deficiency or additional appropriations to complete the service of the fiscal year for which said appropriations are made; and all such apportionments shall be adhered to and shall not be waived or modified except upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment, but this provision shall not apply to the contingent appropriations of the Senate or House of Representatives; and in case said apportionments are waived or modified as herein provided, the same shall be waived or modified in writing by the head of such Executive Department or other Government establishment having control of the expenditure, and the reasons therefor shall be fully set forth in each particular case and communi-

23 cated to Congress in connection with estimates for any additional appropriations required on account thereof. Any person violating any provision of this section shall be summarily removed from office and may also be punished by a fine of not less than one hundred dollars or by imprisonment for not less than one month." (34 Stat., 49)

Thus we see that Congress has not only said that its specific appropriations must not be exceeded for any fiscal year, but that they must be so apportioned throughout the year as to prevent a deficiency, with the provision of a penalty for a violation of this most salutary law.

If, by indirection, any officer of the Government can evade this statute by involving the Government in implied contracts, Congress might as well hereafter make no specific appropriations at all, but leave it to subordinate officers of the Government to make the bills, and pay them by appropriations in gross.

It is ordered that judgment be entered for the defendants, dismissing the petition.

Howry, J., was not present when this case was tried and took no part in the decision.

24

IX.—*Final Judgment.*

At a Court of Claims held in the City of Washington on the 9th day of March, A. D., 1908, judgment was ordered to be entered as follows:

The Court on due consideration of the premises find for the defendants, and do order, adjudge and decree that the petition of the said Robert A. Hooe and Arthur Herbert claimants, be and the same is hereby dismissed.

BY THE COURT.

25 X.—*Claimants' Application for, and Allowance of, Appeal.*

The claimants make application for an appeal from this court to the Supreme Court of the United States on the findings, conclusion of law and judgment rendered herein.

DUDLEY & MICHENER,
Attorneys for Claimants.

Filed May 25, 1908.

Ordered:

This 25th day of May, 1908, that the above application for appeal be allowed as prayed for.

BY THE COURT.

26

XI.—*Certificate.*

Court of Claims.

No. 28238.

ROBERT A. HOOE & ARTHUR HERBERT

vs.

THE UNITED STATES.

I, Archibald Hopkins, Chief Clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the Court, and the conclusion of law thereon, of the opinion of the Court, of the judgment of the Court, of the application of the claimants for, and

the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington, this 23d day of June, A. D., 1908.

[Seal Court of Claims.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

Endorsed on cover: File No. 21,235. Court of Claims. Term No. 439. Robert A. Hooe and Arthur Herbert, appellants, *vs.* The United States. Filed June 23d, 1908. File No. 21,235.